

SCHEDULE 12.11 — BUSINESS ASSOCIATE PROVISIONS

BUSINESS ASSOCIATE PROVISIONS

1. DEFINITIONS

Terms used, but not otherwise defined, in the Agreement or this Schedule 12.11 shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

1.1. Business Associate

“Business Associate” shall mean Contractor.

1.2. Covered Entity

“Covered Entity” shall mean that part of the County designated as the hybrid entity within the County subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E and those parts of the County designated as business associates of other entities subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

1.3. Designated Record Set

“Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.

1.4. Individual

“Individual” shall have the same meaning as the term “individual” in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

1.5. Privacy Rule

“Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

1.6. Protected Health Information

“Protected Health Information” shall have the same meaning as the term “protected health information” in Section 164.501 and is limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7. Required By Law

“Required by law” shall have the same meaning as the term “required by law” in Section 164.501.

1.8. Secretary

“Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

2.2. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information (electronic or otherwise) that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Such safeguards shall, at a minimum, be at least as rigorous as those safeguards required by Section 12.1 of the Agreement.

2.3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of the Agreement.

2.4. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by the Agreement.

2.5. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information (electronic or otherwise) received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through the Agreement to Business Associate with respect to such information.

2.6. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.

2.7. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

2.8. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner

designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.9. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

2.10. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Exhibit A of the Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in the Agreement, Business Associate may use or disclose Protected Health Information to perform Services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

4. OBLIGATIONS OF COVERED ENTITY

4.1. Covered Entity may provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

4.2. Covered Entity may provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

4.3. Covered Entity may notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522.

5. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. EFFECT OF TERMINATION OF THE AGREEMENT

6.1. Effect of Termination

6.1.1. Except as provided in paragraph 6.2 of this Schedule 12.11, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by

Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

6.1.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Schedule 12.11 to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. MISCELLANEOUS

7.1. Regulatory References

A reference in this Schedule 12.11 to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

7.2. Amendment

The Parties agree to take such action as is necessary to amend this Schedule 12.11 from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104–191.

7.3. Survival

The respective rights and obligations of the County and Business Associate under Section 6.1 of Schedule 12.11 shall survive the termination of the Agreement.

7.4. Interpretation

Any ambiguity in this Schedule 12.11 shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

END OF SCHEDULE